

The other federal courts

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The Federal Administrative Court in St. Gallen, the court of first instance for appeals against decisions of federal authorities, including FINMA, also decides in all official languages. In appeal proceedings the language of the contested decision is decisive, although the proceedings may be conducted in another official language if the parties use it.¹ Appeals against FINMA decisions concerning banks and asset managers in Ticino can therefore be conducted in Italian if the contested decision was issued in Italian or if the parties use Italian and the court conducts the proceedings in that language. FINMA itself is bound by the same rule of the Administrative Procedure Act and conducts its proceedings in one of the official languages, normally the language in which the parties have filed or would file their submissions, which for a Lugano institution will often be Italian.²

The Federal Criminal Court in Bellinzona, operational since 2004, is the only federal court with its seat in Italian-speaking Switzerland. It hears federal criminal cases at first instance and since 2019 also on appeal, including complex cases of money laundering, corruption and organized crime that frequently concern the financial centre. The language of its proceedings is fixed by its own statute and may be German, French or Italian. Chapter J.II treats the court and its practice in detail.

1 Cantonal courts and the language of procedure

The cantonal courts of Ticino conduct proceedings in Italian. The Swiss Civil Procedure Code requires proceedings to be held in the official language of the canton in which the case is heard and leaves it to cantons with two or more official languages to regulate their use.³ The Criminal Procedure Code provides in Article 67 that the Confederation and the cantons determine the languages of the proceedings of their criminal justice authorities, and in Article 68 that a party who does not understand the language of the proceedings or cannot express himself sufficiently in it

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is entitled to an interpreter.⁴ A German-speaking company that sues or is sued in Lugano must therefore litigate in Italian, file Italian submissions and, as a rule, provide translations of documents in other languages when the court so orders. The same applies in reverse to a Ticinese company before the courts of Zurich. The territorial principle thus means that the language of a dispute depends on the forum, which gives contractual choice-of-forum clauses a linguistic dimension that is easily overlooked in drafting.

2 Notes

1. Federal Act of 20 December 1968 on Administrative Procedure (APA), SR 172.021, Art. 33a paras. 1 and 2, <https://www.droit-bilingue.ch/en-it/1/17/172.021-33a-43.html>, applicable to the Federal Administrative Court under Art. 37 of the Federal Administrative Court Act of 17 June 2005, SR 173.32, <https://www.droit-bilingue.ch/de-it/1/17/173.32-37-44.html>. ↩
2. Federal Act of 22 June 2007 on the Swiss Financial Market Supervisory Authority (FINMASA), SR 956.1, Art. 53 (procedure governed by the APA), <https://www.droit-bilingue.ch/de-it/9/95/956.1-53-76.html>; APA, Art. 33a para. 1 (above). ↩
3. Swiss Civil Procedure Code of 19 December 2008 (CPC), SR 272, Art. 129, <https://www.droit-bilingue.ch/en-it/2/27/272-129-132.html>. ↩
4. Swiss Criminal Procedure Code of 5 October 2007 (CrimPC), SR 312.0, Art. 67 para. 1 and Art. 68 para. 1, <https://www.droit-bilingue.ch/de-it/3/31/312.0-67-70.html> and <https://www.droit-bilingue.ch/de-it/3/31/312.0-68-71.html>. ↩

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